

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 21ST DECEMBER 2005 / 30TH AGRAHAYANA 1927

CRL.A.No. 1529 of 2003()

SC.88/2000 of ADDL.SESIONS COURT (ADHOC), KASARAGOD
CP.300/1999 of JUDL. MAGISTRATE OF FIRST CLASS, KASARAGOD
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APPELLANT: ACCUSED

RAJA S/O. ANNAGA,
CONVICT NO.9438,
CENTRAL PRISION, KANNUR.

BY ADV. SRI.T.SETHUMADHAVAN
SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

RESPONDENTS: COMPLAINANT

THE STATE OF KERALA, REPRESENTED BY
THE SHO KUMBALA POLICE STATION.

BY PUBLIC PROSECUTOR SRI.C.P.SAJI.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 21/12/2005, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K. HEMA, J.

Crl. Appeal No. 1529 of 2003

Dated this the 21st day of December, 2005

JUDGMENT

The appellant was convicted and sentenced for offence under Section 55 (a) of the Abkari to undergo rigorous imprisonment for 3 years and to pay fine of Rs.1 lakh and in default of payment of fine to undergo rigorous imprisonment for 6 more months. Set off was also allowed.

2. According to prosecution, on 8.8.1999 at about 11 a.m. the accused was found in possession of 10 bottles of Boss Whisky in contravention of the provisions of the Kerala Abkari Act, near bus waiting shed in Sheriya Village. To prove the prosecution, the prosecution examined PWs 1 to 3 and marked Exts.P1 to P5 and MO1. Accused did not adduce any evidence. The court below after considering the evidence in detail found that the prosecution has established the guilt of the accused.

3. PW3 is the Sub Inspector of Police, who detected the crime. He deposed that on 8.8.89 he was on patrol duty. At 11 a.m. he reached near a place called Muttam and found the accused carrying a bag and standing near a bus waiting shed. On suspicion, he was apprehended. On examination, he was found in possession of 10 bottles of Whisky containing 750 ml. capacity each. Since he was in possession of contraband articles, in contravention of the provisions of the Kerala Abkari Act, he was arrested from the spot. He was taken to the police station and a case was registered against him. The F.I.R is Ext.P1. Seizure mahazar is Ext.P2. PW3 himself conducted the investigation and submitted a charge-sheet against the appellant.

4. PW1 is the Police Driver. He deposed that he proceeded for patrol duty along with PW3 and he found the accused standing with a bag near bus waiting shed. On examination he was found to carry 10 bottles of Boss Whisky containing 750 ml. Capacity each. Two bottles were seized a sample. The accused was arrested. PW1 corroborated PW3 in all material particulars. Both of them were police officials but nothing is suggested as to why they should perjure against the accused. There is no reason either PW1 or PW3 falsely implicate the accused in a crime. They have stood the test of cross-examination and nothing is brought out to discredit their version. The court below has rightly believed the evidence adduced by both of these witnesses.

5. Learned counsel appearing for the appellant submitted that there is some discrepancy with respect to the material object produced. The seizure was effected on 8.8.1999. But it is brought out in evidence that, as per the label, the Whisky was manufactured on 27.8.2001. It is argued that the Whisky, which was manufactured in 2001, could be seized in 1999. Therefore, there is every chance of mistake in producing the contraband article and no liability can be attached to the appellant based on the contents of such bottles. It is true that the date of manufacture is subsequent to the date of seizure of the article. But the articles were produced in court in 1999 itself i.e. much before the date of manufacture of Whisky as evidenced by the labels of the same.

6. Therefore, as the court below rightly held that this fact by itself will not create any suspicion regarding the possibility of change in the article produced before the court. The suspicion could have arisen if the seizure was effected in 1999 and the Whisky which was manufactured in 2001 as per the label declaration which is produced only in 2001. The defence has no case that

on the date of production of properties on 16.8.99 some other bottles were produced and that MO1 series bottles marked are not the same. The production of the article before the court was much prior to the alleged date of manufacture of the Whisky, as seen from the label. In the above circumstances, I do not find any reason to reject the prosecution case on this ground.

7. Learned counsel appearing for the appellant also submitted that there is inordinate delay in sending the material objects before the court and also for analysis. According to him, 8 days delay occurred in sending the sample to the court and he took one month. This delay materially affected the prosecution case adversely. But, in my view, mere delay by itself will not be sufficient to discard the prosecution case. As per Section 34 of the Abkari Act, it is sufficient if the article is produced before the court without unnecessary delay. Even otherwise, there is nothing to indicate that the delay was caused deliberately with a view to concoct evidence against the accused. So also, unless there is evidence to indicate that because of the delay some prejudice is caused to the accused and there is chance for producing a different article in court the delay may not be material. I find that there is absolutely no ground to interfere with the order. No other ground was raised.

8. However, learned counsel appearing for the appellant submitted that the appellant had already suffered seven months' imprisonment and the article seized was only 7.5 litres of Indian made foreign liquor. The appellant is a first offender and there is no evidence to show that he was involved in any offence of similar nature. In the above circumstances, considering the facts and circumstances, I find that sentence of rigorous imprisonment for one year will be sufficient for offence under Section 55(a) of the Abkari Act to meet the ends of justice. Hence, sentence is

modified as follows: The appellant is sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.1 lakh and in default to undergo simple imprisonment for three months, under Section 55(a) of the Abkari Act.

Appeal is partly allowed.

K. HEMA, JUDGE.

krs.

K.HEMA, J.

Cr1.A.NO.1529 OF 2003

JUDGMENT

21.12.2005